

**Task Force on the Planning and Development of
Marine Aquaculture in Maine
Friday, September 5, 2003 (Day 2)
Darling Marine Center – Damariscotta, Maine**

1. Boat Tour of Damariscotta River Shellfish Sites – Task Force and DMR Staff (7-9:15 am)

The TF and DMR staff took a boat tour of the Damariscotta River Shellfish sites in order to observe and learn about shellfish farming and uses of the Damariscotta River; understand the role of municipal harbormasters in aquaculture sites; and understand how a local conservation organization interacts with aquaculture farms.

While on the boat tour, Dick Clime of Dodge Cove Marine made these comments to the TF for consideration in moving forward:

- University involvement & the importance of Research and Development
- Symbiosis between the aquaculture industry and tourism
- Keeping the regulatory burden from being so great that only corporate level industries could comply
- If bay management is undertaken, it should deal with all users, not just aquaculture
- If bay management is undertaken, it should provide an ability to respond rapidly to advances in technology, science, and management.

The meeting reconvened at 9:30 a.m. on Friday, September 5, 2003 at the Darling Marine Center in Damariscotta, Maine.

TF Present: **Jim Salisbury, Josie Quintrell, Van Perry, Will Hopkins, Anne Hayden, Des Fitzgerald, Jim Dow, Paul Anderson.** TF absent: **Don Perkins, Paul Frinsko and Brian Beal**

SAP present: **Sebastian Belle, Roger Fleming, Chris Hamilton and Dave Schmanska.** SAP absent: **Carolyn Manson, Eric Horne, Erick Swanson, Pat Keliher, Rob Bauer and Tom Morris.**

2. Andrew Fisk and Mary Costigan gave a presentation on the regulatory framework for the Marine Aquaculture in Maine. Materials: Background Memo – Regulatory Review and Flowcharts

Marine Aquaculture must operate within the APA process adequately franchising a balance to the applicant, the State and the general public. It was explained that the 1,000-foot criteria went through the normal legislative process and it was determined that 1,000 feet was appropriate.

The level of notice given to an abutter is different than the notice given to the general public. The State looked at the process on how to notify the general public and how the general public can participate.

Various Parties Affected

- Directly affected parties – 1,000 feet is acceptable
- Wider public – State has made changes, but think there is still room for improvements
- Experts (State agencies/institutions/municipalities) that give expertise on laws/ordinances

Q. How does term intervenor relate to three groups just described?

A. APA has a category – you can request to be an intervenor if you can demonstrate that you are directly affected or have an interest. You become a formal party to the application, which gives you the same rights at the hearing. Intervenor status – they get proposed decision and have 10 days to respond – general public does not have this. People applying for intervenor status outside of 1,000 feet must be substantially and directly affected. You have to stand apart from the general public in some way. Example: They weren't riparians, but had sailing school right in the same area.

Q. Do you see the public having a similar role as the intervenor status?

A. The way we treat this is not different than in Title 5. The public needs education on what intervenor means. Being a riparian, does not give intervenor status. The general public or intervenor status is not that different.

Q. *Why have intervenor status at all?*

A. You are a legal party guaranteed the right to ask questions. Most hearings don't have intervenors. The Hearing Officer can do much of the work in advance. Intervenor status comments can be consolidated. (Several people saying the same thing with one person testifying.)

Andy explained the recent changes that have improved the efficiency and fairness of the leasing process:

- In terms of Notice, there is now a pre-application meeting requirement – thinking in advance, feed applicant information about the reality of local issues.
- The municipalities/towns now gets the application (after the pre-app requirement) with some possible questions for them to report back early on in the process. The towns used to get the information late and felt they got *jumped*. There is an average of 6 months between application filing and public hearing for various reasons. In small towns, information may sit in mailboxes, or it is not given to the right person, committees may not convene within the time period, etc. When they don't get back to us, we presume everything's ok. Selectmen get a questionnaire and a different questionnaire is sent to the harbormaster. There is nothing in rule that says the towns have 30 days or 60 days to respond. The aquaculture site coordinator does a site visit and makes an attempt to contact the harbormaster.
- There are now public meetings or scoping sessions. DMR advertises for these scoping sessions and it is given to our environmental experts. The town is also aware that they have an opportunity to respond.
- The display ads have been changed so that they are graphically distinct framing the 5 Ws (what, where, why, when and how) and are written more clearly for the general public.
- We are constantly giving people strategies to get involved in the lease process. We have to offer them their rights.

Mary explained the notification process. On the inside flap of every file, there is a checklist to hit every point and get all the dates. There is a standard distribution list of any aquaculture application

People are:

- Notified when application is complete
- Notified when hearing date is set – (this is new also)
- Notified of 30-day notice, get application and site report

There was some concern with the length of time it takes to process an aquaculture lease. Time of year is a large factor since site work can only be done from April 1 to November 15. When was application received? Is it a finfish application? Water clarity also plays a role.

Q. *If there are 15 shellfish applications in the queue, what is the distinction of finfish applications?*

A. The Department environmental review would be charged with the finfish process. The Commissioner also has to review the application.

The renewal process and changing ownership are not different processes. With both, DMR receives a letter stating what type of aquaculture and to what extent. Notice is sent out to riparians and the town and a newspaper ad is placed in the local papers. There is no hearing unless there are 5 or more requests for a public hearing. Most meetings are in the evening to allow for people working days to attend.

Current process

1. Pre application
2. Application
3. Reviewed by Agencies/Municipalities
4. Scoping Sessions/Public Meeting
5. Site visit
6. Public Hearing

Q. *Would it be appropriate to have the scoping session before the application process?*

A. It's a balance of rights. People have the right to apply. Is the die already cast?

Sebastian Belle stated that the process has made some very proactive changes. DMR now sends out a press release to get the word out. Along with the implementation of the MePDES program requiring the State to examine its existing consolidated application process (DMR, DEP, US Army Corp of Engineers). There are two other processes going on. There aren't any other marine resources groups that have as much notice as the aquaculture process. DOC submerged lands permits have similar requirements – Not one joint permit.

3. External Impacts Discussion as it relates to Section 6 of the resolve language. Materials: Background Memo – External Impacts

Andy Fisk reviewed the potential range of issues that could be considered in the resolve language.

Rating system – 1-3 rating of further discussion

3 – More than 1 presentation needed for the group and a lot of reading

2 – One presentation and a fair amount of reading

1 – Won't need a lot of brainstorming – or any work at all

Adverse Noise & Light – rated a 2

- DMR has draft language that will be given for next meeting
- Industry has BMP
- Maine Coast Heritage Trust (MCHT) has ideas (landscape architecture)
- Riparian ideas
- New & existing operations
- Precedence in other sectors
- Statutory criteria

DMR's recommendation: Review statute and draft implementing rules for sufficiency.

Structures, Buildings and Equipment - rated a 2

- Statutory criteria in place
- DMR to give new mitigation standards
- MCHT has ideas
- Riparians have ideas

DMR's recommendation: Review statute and draft implementing rules for sufficiency.

Benthic & Water Quality – rated a 1

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- DEP just did this for salmon
- Huge/2 agencies at work – DEP & EPA
- At least comment to legislature on how much is adequate? Not everything is bad.
- Central to permit
- Science is weak
- Spotlight concerns
- Look for a level of comfort – “a finding” – hear from voices (in writing)
- Suggest research/\$
- Permit has been appealed

DMR's recommendation: DEP MePDES permit & DMR FAMP program adequately address the issue.

Wild Fish Species – rated a 3 crafting and a 1 on learning time

- DMR has statutory criteria, DEP has water quality certification language; ACOE has criteria – major overhaul not needed
- Adequate site-by-site
- Atlantic Salmon – should there be “no go areas?”
- Heard about only salmon
- Some feel not handled adequately
- Not a lot of guidance – need more
- Why still controversial?
- SAP to feed more

- Be sure to include relevant benthic/water quality

DMR's recommendation: *DMR and DEP (for farms with a discharge) have statutory and rule criteria, as does US Army Corp of Engineers. Standards are appropriately stringent to consider evidence on a site-by-site basis.*

Navigation – rated a 1

- DMR, Army Corp of Engineers, municipalities – adequate authority
- Light focus
- No more presentations

DMR's recommendation: *There is adequate statutory and regulatory oversight of this issue on a site-by-site and area-wide basis.*

Wild Capture Fisheries – rated a 2

- DMR guidance – adequate
- When and how made (access!)
- Get lobster fishermen into this
- Should preference go to them? Statute does.
- What if lobsters crash?
- Include scallop/urchin
- Info into hearing? Site inspections reality – timing
- DMR can distribute public hearing notices to other commercial fisheries
- Precedent set – example of state policy getting specific
- Other governance is in place (Clam Committee/Lobster Zone Council/ Sea Urchin Zone Council)
- People aren't proposing leases in traditional fishing areas – they are doing their homework ahead of time
- Need to address the issue of disenfranchising the system – people need to speak up
- Need to put together a panel of fishing groups – even for public relations – in Eastport (panel) – (blend of leadership and active fishermen)

1. Access to hearing – disenfranchising
2. Site inspection reality – what is DMR basing it on?
3. Preference – although it's in statute

DMR's recommendation: *There is adequate statutory and regulatory oversight of this issue on a site-by-site and area-wide basis.*

Conserved Lands & Scenic Character – rated a 2

- Need to look at statutory language – do we need to look at conserved lands? Do they fit under 1,000 feet criteria
- Conservation easements
- Do we need additional statutory language?
- Several ambiguous situations
- MCHT has ideas/Broader review criteria – will be addressing TF on the 26th
- DEP has rules on docks that might be a model/example
- DEP will look for other models
- Visual impact legislation
- Consider the 1,000 feet limit - What is the origin of the 1,000 feet – we haven't done legislative research on their decisions.

DMR's recommendation: *Review present statutory criteria; determine if privately conserved land with public access merits equivalent legal status to a public park, beach or docking facility.*

Exotic Species – rated a 1

- Questions have been raised to DMR – what kind of critters in what kinds of cages? Domestic/exotic/endangered – what do you allow? – It's either non-native or indigenous i.e., American oysters in Taunton Bay
- There is guidance for us to address on a case-by-case basis – DMR statute guidance (review the definition of “exotic” existing – how we import species – a piece on invasive species
- Recent rewrite of this chapter – (and is currently 90% about disease)

- Does this exceed our technical capacity – should DMR form a scientific/research committee or have a presentation – maybe a simple statement re: research & better definition
- Is this issue of intrastate transfer (bay to bay) of species or importing species – bay to bay more the emphasis
- Provide in writing and have a 2-hour slot for discussion at future meeting.

DMR's recommendation: Review existing statutes and rules and develop a policy framework on the introduction of marine organisms to elaborate on statute and rules.

Wildlife & Habitat – rated a 2

- Same as Wild Fish Species

Tourism & Recreation – rated a 3

- Must wrestle with this
- Need policies for Critical Review in general
- EA will not have significant piece to this question, but toggle with tourism
- Include land development
- recreation = sport fishing; tourism & development = land
- Separate recreation out of this?
- Encourage symbiosis - Try to encourage the aquaculture industry or tourism industry – there is a white paper and TF for tourism – encourage symbiosis between two sectors if possible. Neat idea to say you're serving finfish grown right out in front of your restaurant.
- How are they compatible?

DMR's recommendation: Review state policies and goals on tourism and recreation giving consideration to the results of the economic impact study.

Riparian Property values – rated a 1

- DMR – don't address – no precedent for diminution of value
- Gets into "takings"
- Property value goes down according to appraiser
- At least comment – what to expect from public comment
- A finding that there is no precedent set or regulation to address this

DMR's recommendation: This is a fraught course of action with a great deal of unanticipated precedent.

Q. Does DMR mitigate an aquaculture structure?

A. MCHT will state where sites should not go.

Q. What is the distinction between change of scenic and wild character of area & aesthetics?

A. Aesthetics = How it looks and sounds
Change of character of area = how well it fits in

4. Next Steps

- The TF's responsibility is beyond short-term regulatory fixes. It should make recommendations re: research
- The TF asked the SAP to provide written comments to each point on External Impacts memo
- Josie offered to do a chart on how to compare aquaculture lease law with other comparable laws. Mary Costigan will be the Department contact person. Targeted to get it ready by October meeting.
- Post E-mail addresses – you will hear shortly how e-mails will be distributed – e-mails to Paul or to TF e-mail address.
- Detailed agenda to staff to members 10 days before
- Any way to have SAP and public written materials sooner than the night before would be better
- Based on panel yesterday and issues, there was consensus from the TF that it would be helpful when those panels are constructed to try to find panelists that have differing issues.
- Read intensively, interact with DMR, need consistent attendance from SAP members. Andy will be at Blue Hill mtg.
- For Blue Hill meeting read material and be ready to further discuss regulatory process.

Since this was Andy's last meeting, the TF asked about any last words relating to this process. In summary, the work on the vision statement is the most amorphous, but has the most potential to keep the course steered. We need to have as much of an equitable system as possible. DMR's enabling statute does not have as detailed a vision statement as some other agencies. Getting a strong vision statement from the TF is needed. If the process continues to be transparent, people will not lose faith. We owe it to ourselves to make a credible system. We're on the right course to get the acrimony down.

5. Public Meeting Process in Blue Hill Bay – The Facilitator suggested a basic structure – a 3-hour session from 7-10. During the first hour and a half, have several tables, each with a descriptive statement about a topic of things you are learning (conserved lands, habitat, etc.) Get advice and feedback and numbers if they want to comment. This gives a count of how many people will comment. The primary rule is don't repeat same issue if its been covered. During the second hour and a half, have an open session like any other public meeting. It's not public comment – they are a source of advice. Should we take a number if they are not covered under the 6 topics? There was consensus that this format would alienate people about the process and recommended against topic tables. Overly structured public events can be disenfranchising for people, understanding that a free-for-all is not as productive either.

It was suggested that the TF set the stage: Who we are, what we've discussed, purpose of meeting and what we're expecting. Give out handouts at the public meeting with an overview of the process, the resolve, minutes of the previous meeting and an annotated schedule of the last 2 meetings, along with the website. Have 6 posters on the wall asking for input that could be added to the posters. Get info to the SAP ahead of time to let them know what's expected. There will be an opportunity to ask questions about process. The ad needs to say the TF is gathering information. This is not an informational meeting that people be receiving information. Van, Anne & Jim Dow will not be there and Des may be late.

Meeting adjourned at 12:40 p.m.